

Rec'd 2/11/99  
A. Peter Bragg

ORIGINAL

# FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of:	)	WT Docket No. 94-147
	)	
JAMES A. KAY, JR.	)	
	)	
	)	
Licensee of one hundred fifty	)	
two Part 90 licenses in the	)	
Los Angeles, California area	)	

R E V I S E D & C O R R E C T E D C O P Y

Volume: 20  
Pages: 1961 through 2177/2199  
Place: Washington, D.C.  
Date: January 13, 1999

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## HERITAGE REPORTING CORPORATION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of: )  
 )  
JAMES A. KAY, JR. ) Docket No. 94-147  
 )  
Licensee of One Hundred Fifty-Two )  
Part 90 Licenses in the )  
Los Angeles, California, Area )

Courtroom A-363, Room 1  
The Portals Building  
445 12th Street, S.W.  
Washington, D.C.

Wednesday,  
January 13, 1999

The parties met, pursuant to the notice of the  
Chief Judge, at 9:00 a.m.

BEFORE: HON. JOSEPH CHACHKIN  
Chief Administrative Law Judge

APPEARANCES:

On behalf of James A. Kay, Jr.:

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APPEARANCES: (CONT'D)

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Also on Behalf of the Federal Communications  
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1963

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Barbara Ashauer	--	1990	--	--	--
by Atty. Shainis	1983	--	--	--	--
by Atty. Keller	1985	--	--	--	--
Examination by Judge	1991	--	--	--	--
Eric R. Johnson	1993	2037	2046	--	--

1964

E X H I B I T S

IDENTIFIED

RECEIVED

REJECTED

Bureau's:

281	Prev.	--	1971
282	Prev.	--	1971
283	Prev.	--	1971
284	Prev.	--	1971
285	Prev.	2043	1971

Kay's

10	2004	2010	--
11	2054	2084	--
12	2055	2085	--
13	2055	2085	--
14	2056	2108	--
15	2056	--	--
16	2057	--	--
17	2057	2114	--
18	2058	2114	--
19	2058	2115	--
20	2058	2115	--
21	2059	--	--

1965

E X H I B I T S --continue--

<u>Kay's</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
22	2060	--	--
23	2060	2117	--
24	2060	2117	--
25	2061	2117	--
26	2061	2118	--
27	2061	2119	--
28	2062	2119	--
29	2062	2119	--
30	2062	2120	--
31	2063	--	--
32	2063	2121	--
33	2064	2122	--
34	2064	2129	--
35	2064	2131	--
36	2065	--	--
37	2068	--	--
38	2067	2142	--
39	2068	--	--
40	2070	--	--
41	2071	2143	--
42	2072	--	--

1966

E X H I B I T S

<u>Kay's</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
43	2073	2144	--
44	2073	2147	--
45	2073	2147	--
46	2074	2148	--
47	2074	2153	--
48	2074	2155	--
49	2075	2157	--
50	2075	--	2161
51	2075	--	2162
52	2076	2164	--
53	2077	2166	--
54	2077	2166	--
55	2078	--	--
56	2078	--	--
57	2079	--	--
58	2079	--	--
59	2080	--	--
60	2081	--	2171
61	2081	--	2175
62	2082	2176	--

1                    P R O C E E D I N G S

2                    JUDGE CHACHKIN: On the record.

3                    The Bureau has completed its case, I assume?

4                    MR. KNOWLES-KELLETT: With the exception of cross  
5 and redirect of Mr. Kay, Your Honor.6                    JUDGE CHACHKIN: All right. I had withheld a  
7 ruling on Bureau Exhibit 281.

8                    MR. KELLER: Which is?

9                    JUDGE CHACHKIN: Which is the Kay database records  
10 produced by Vincent Cordaro.11                   MR. KELLER: Your Honor, subject to some motions  
12 and I am sure some preliminary discussion we are going to  
13 have here, I have down in the witness room a proposed  
14 rebuttal witness who will give testimony that is  
15 specifically related to that, so you may wish to withhold  
16 ruling until you hear that, assuming you allow the rebuttal  
17 witness to testify.18                   JUDGE CHACHKIN: What is the rebuttal witness  
19 going to testify to?20                   MR. KELLER: The rebuttal witness is a computer  
21 expert who is in the witness room right now in the process  
22 of examining some of the files that came from the disk that  
23 was produced by Mr. Cordaro. He will testify about matters  
24 relating to that.

25                   While I am not going to --



1 JUDGE CHACHKIN: All right

2 MR. KELLER: -- have him specifically comment on  
3 the testimony of Mr. Cordaro, I will be asking him some  
4 questions that are the same as the questions that were asked  
5 of Mr. Cordaro yesterday, and I guess what I can proffer to  
6 you at this time is that it will have some edification  
7 regarding these files. At that point you can make a more  
8 determined --

9 JUDGE CHACHKIN: I was going to say that my  
10 inclination was to reject the exhibit.

11 MR. KELLER: You may --

12 JUDGE CHACHKIN: However, I am prepared to listen  
13 to further evidence --

14 MR. KELLER: Okay.

15 JUDGE CHACHKIN: -- simply for the reason that we  
16 do not have any sponsoring witness. The Bureau has not  
17 produced a sponsoring witness.

18 MR. KELLER: I agree. Even beyond the rejection,  
19 even if the exhibit is rejected, though, I believe this  
20 testimony is nonetheless going to have some relevance to --

21 JUDGE CHACHKIN: All right.

22 MR. KELLER: -- how we interpret the testimony of  
23 Mr. Cordaro. Also, I think it will still be relevant. I  
24 think it will still be relevant testimony.

25 JUDGE CHACHKIN: All right. I am prepared to hear

1     that testimony --

2             MR. KELLER:   Very well.

3             JUDGE CHACHKIN:  -- obviously since there has been  
4     testimony from Mr. Cordaro as to what he did, but insofar as  
5     this particular exhibit is concerned, the Bureau has not  
6     produced a sponsoring witness for the exhibit.

7             MR. KNOWLES-KELLETT:  Your Honor, our intention,  
8     as we stated before, was not to use it for the truth of the  
9     matter asserted, but sort of the categories of stuff that  
10    was contained therein.

11            However, we thought that that was a simple matter.  
12    It is not worth us producing a computer expert.  We think  
13    that we got what we needed from Mr. Craig Sobel.

14            MR. KELLER:  Your Honor, I agree and renew the  
15    motion that this exhibit be rejected.  The same ruling would  
16    apply to, I do not have the binder in front of me right now  
17    because it is with my expert, but Exhibits 281 through there  
18    is a series of exhibits that are the same thing, Your Honor.

19            JUDGE CHACHKIN:  Yes.  The ruling was withheld  
20    with respect to 281 through 285.  My inclination, in view of  
21    the fact that there has not been any sponsoring witness,  
22    is --

23            MR. KELLER:  I will further say I have no  
24    objection if the Bureau wishes to produce and introduce as  
25    evidence or introduce as an exhibit in lieu of this what

1 they would then stipulate are unmodified copies of the files  
2 actually produced by Mr. Cordaro at his deposition.

3 We will have testimony this morning from our  
4 rebuttal witness which would potentially make that useful to  
5 Your Honor.

6 MR. KNOWLES-KELLETT: What you are saying is put  
7 in the disk?

8 MR. KELLER: Put in the disk. I have no objection  
9 to that, as long as you will put it in with the stipulation  
10 that the file contained on the disk or the copies thereof  
11 have not been modified from those produced by Mr. Cordaro.

12 MR. SCHAUBLE: Are you asking with respect to the  
13 specific ZIP file?

14 MR. KELLER: Exactly what you received from him,  
15 so, yes, the specific ZIP file. In other words, I want a  
16 copy of the actual file that he produced, not one that has  
17 been rezipped or modified in any way.

18 JUDGE CHACHKIN: Well, at this time --

19 MR. KELLER: They do not have to. I am just  
20 saying I would not object to that.

21 JUDGE CHACHKIN: Well, I do not know whether I at  
22 this late stage would permit it, but at this point since the  
23 Bureau has not produced a sponsoring witness for this  
24 material I will reject Bureau Exhibits 281 through 285.

25 //

1 (The documents referred to,  
2 having been previously marked  
3 for identification as Bureau  
4 Exhibit Nos. 281 through 285,  
5 were rejected.)

6 MR. KELLER: Your Honor, along those same lines,  
7 there is also a motion outstanding. I had made a motion,  
8 Your Honor, following the testimony and cross of Paul Oei,  
9 one of the Commission witnesses, that you strike that  
10 portion of Mr. Oei's testimony relating to the 1992  
11 inspection in Mr. Kay's office relating to the remote link,  
12 or it has been referred to sometimes here as the cross band  
13 repeater, et cetera.

14 The basis of my motion was that this was testimony  
15 being offered presumably going to the intentional malicious  
16 interference issue in this case, that the only testimony  
17 that Mr. Oei offered was that he was present at an  
18 inspection -- by that, it was an inspection that he was  
19 merely present at; he was not the one primarily conducting  
20 the inspection -- in I believe it was May of 1992 at Mr.  
21 Kay's office. The result of that inspection was the  
22 issuance of a notice of apparent liability to Mr. Kay.

23 A petition for reconsideration was filed, and I  
24 might note that that notice of apparent liability did not  
25 make a finding of intentional interference. It rather made

1 a finding that there were certain technical licensing  
2 problems with the set up that Mr. Kay was operating. Mr.  
3 Kay disputed that, still disputes it to this day.

4 He filed a timely petition for reconsideration.  
5 The Commission at that time found that the notice of  
6 apparent liability was not in order. Therefore, a petition  
7 for reconsideration did not really lie, but they said we  
8 will treat the petition for reconsideration as a response to  
9 the notice of apparent liability, at which point they issued  
10 a forfeiture order. Mr. Kay filed a timely petition for  
11 reconsideration to the forfeiture order, which remains  
12 pending to this day.

13 Now, my position, Your Honor, is that this is a  
14 matter that was already addressed by the Commission in that  
15 phase. We, throughout the pre-trial stages of this case,  
16 frequently asked for a bill of particulars as to what  
17 specifically it was. I mean, if you are charging us with  
18 malicious interference, who did we interfere with, when, on  
19 what frequency, and we were never really provided with that  
20 information. We have now been through the entire Bureau's  
21 case. The only evidence that has been introduced even  
22 remotely going to interference is that testimony of Mr. Oei.

23 My feeling is I do not know what the Commission  
24 intended when they designated a malicious interference  
25 issue, but if they intended in designating the issue to

1 relitigate a matter that had already been addressed in  
2 forfeiture and notice of apparent liability orders back in  
3 1992, it seems to me that at a minimum they would have  
4 acknowledged and referenced those orders, so I do not think  
5 that we can say that that particular testimony has any  
6 relevance to the designated issue.

7           You withheld a ruling at the time because the  
8 Bureau represented, I believe, that there would be testimony  
9 from other witnesses. I believe the only witness that made  
10 any testimony that even remotely touched again on this  
11 subject, and I stand to be corrected if the Bureau's  
12 recollection is different from mine, was Mr. Cordaro  
13 yesterday, who stated that he was present during the  
14 inspection, but he also testified on cross-examination that  
15 he was present at his desk at which he could not even view  
16 the matter.

17           He testified vaguely about something called a  
18 cross band repeater. He offered no direct evidence of being  
19 aware of any interference. He never stated a date that  
20 anybody was interfered with. He does not even fully seem to  
21 understand -- well, I will stop there. I will not  
22 characterize his testimony beyond that.

23           It is just that I do not think that the testimony  
24 of Mr. Oei is relevant to this case because it is not  
25 relevant to any issue designated by the Commission because

1 the 1992 matter is already being addressed separately by the  
2 Commission.

3 JUDGE CHACHKIN: What is the Bureau's position?

4 MR. SCHAUBLE: Your Honor, a couple things. First  
5 of all, Mr. Keller stated that this was the only testimony  
6 concerning the interference issue.

7 JUDGE CHACHKIN: Let's assume it is not. Let's  
8 just deal solely with Mr. Oei's testimony.

9 MR. KELLER: That is not relevant to my argument.  
10 You are correct.

11 JUDGE CHACHKIN: Let's just deal with that. Is  
12 that relevant to this proceeding, the issues in this  
13 proceeding?

14 MR. SCHAUBLE: Your Honor, first of all, there was  
15 a portion of Mr. Oei's testimony, which I do not think Mr.  
16 Keller is talking specifically about, which I think is  
17 relevant to the construction issue.

18 JUDGE CHACHKIN: Fine.

19 MR. KELLER: I am only talking about his testimony  
20 regarding the 1992 inspection --

21 MR. SCHAUBLE: Okay. I just wanted to make sure  
22 we are clear on that.

23 MR. KELLER: -- at the office, at the Van Nuys  
24 office.

25 When we get the transcript, we can later come

1 back, and I can designate the specific portions I am talking  
2 about.

3 MR. SCHAUBLE: Your Honor, I think there was  
4 evidence taken concerning this inspection. I think we can  
5 argue, you know -- personally, we would like an opportunity  
6 to review the transcript of Mr. Oei's testimony. After that  
7 we may conclude that there is insufficient evidence of  
8 willful and malicious interference, but --

9 JUDGE CHACHKIN: All right.

10 MR. SCHAUBLE: -- we do not --

11 MR. KNOWLES-KELLETT: It is premature at this  
12 point, Your Honor. He is arguing the sufficiency of the  
13 evidence.

14 JUDGE CHACHKIN: No, no, no.

15 MR. KELLER: No, I am not. No, I am not. I am  
16 arguing the relevance of the evidence to any designated  
17 issue. The sufficiency is something to be argued in your  
18 findings and conclusions, but I am saying this evidence does  
19 not go to any designated issue.

20 MR. KNOWLES-KELLETT: It goes to interference I  
21 think. We investigated an interference complaint and found  
22 equipment that Mr. Oei found to be irregular. Whether that  
23 is sufficient to prove malicious interference is something  
24 we may in the end agree with counsel that it was not. We  
25 have to review the transcript.



1 MR. KELLER: I agree.

2 MR. KNOWLES-KELLETT: It is relevant. It may not  
3 carry our burden.

4 JUDGE CHACHKIN: What about the second point that  
5 already it has been covered in the notice of apparent  
6 liability?

7 MR. KNOWLES-KELLETT: Basically the CIB withheld  
8 any action on that when this was designated because they  
9 thought interference was the purview of -- it was yours to  
10 decide and not theirs at that point.

11 MR. KELLER: When did they make any such  
12 statement?

13 MR. KNOWLES-KELLETT: They did not make such a  
14 statement.

15 JUDGE CHACHKIN: So they dismissed the notice of  
16 apparent liability?

17 MR. KNOWLES-KELLETT: No, they did not.

18 MR. KELLER: Are they going to withdraw the  
19 forfeiture order?

20 MR. KNOWLES-KELLETT: You know, if there is no  
21 finding in this case they may.

22 MR. KELLER: Wait a minute. There is a forfeiture  
23 order outstanding. I would suggest that His Honor cannot  
24 issue another forfeiture on top of the one that is already  
25 there.

1           Are you prepared to say that if this evidence goes  
2 forward, no forfeiture can be issued for it?

3           MR. KNOWLES-KELLETT: You know, this is an inter  
4 Bureau matter. I would not be authorized to say.

5           JUDGE CHACHKIN: I suggest that you take it up  
6 with the Bureau and whoever you have to deal with and get  
7 back and let us know what their response is, whether they  
8 intend to go forward with the notice of apparent liability.

9           MR. KNOWLES-KELLETT: The issue, as Mr. Keller  
10 correctly stated, this goes to two separate issues. The  
11 forfeiture order, which related to unlicensed operation of  
12 the repeater, is not the issue in this case. They really  
13 are separate and distinct matters --

14          JUDGE CHACHKIN: No.

15          MR. KNOWLES-KELLETT: -- arising out of the same  
16 set of facts.

17          MR. KELLER: Your Honor, that I find totally  
18 objectionable. You cannot go in 1992, do an inspection.  
19 The impetus of the inspection, as the witness testified, as  
20 Mr. Oei testified, was an interference complaint. Do an  
21 inspection, as a result of that inspection issue of notice  
22 of apparent liability and a forfeiture order --

23          MR. KNOWLES-KELLETT: All right. It is not fair.

24          JUDGE CHACHKIN: All right. Counsel will --

25          MR. KNOWLES-KELLETT: I will check with the CIB

1 and report back to you.

2 JUDGE CHACHKIN: All right. Fine.

3 MR. KELLER: What I will also do, Your Honor,  
4 since you are going to obviously have this matter under  
5 advisement for a time longer, is as soon as we get the  
6 transcript of that day's testimony, the next time we bring  
7 this up I will have the actual transcript pages and specific  
8 parts that we would want stricken.

9 JUDGE CHACHKIN: All right. All right. All  
10 right.

11 MR. SHAINIS: Your Honor, there is another matter.

12 JUDGE CHACHKIN: Okay.

13 MR. SHAINIS: Last night we discovered, due to  
14 some miscommunication, three witnesses who were supposed to  
15 arrive yesterday evening did not arrive. They will be  
16 arriving this evening.

17 JUDGE CHACHKIN: Who is that?

18 MR. SHAINIS: The witnesses are, Your Honor, the  
19 Marshalls -- there's two of them -- and Mr. French is the  
20 third one.

21 When we found out what had happened, we called Mr.  
22 Schauble at his home and advised him as to what was  
23 happening, and we think we have so that this day is not  
24 wasted, and there is another problem also.

25 Mr. Kay, who needs to be cross-examined still, has

1 two problems. One is his back, which is the primary one.  
2 He does not think he is going to be able to make it  
3 tomorrow. Later this afternoon we will take him to a  
4 doctor. Apparently he has had back problems before, and he  
5 knows what he has to do. So, he would not be available  
6 today.

7 Again, I am going to tell you I am embarrassed,  
8 and I apologize for this. What happened was in juggling  
9 around different schedules this is just one of the things  
10 that was not focused on.

11 MR. KELLER: Your Honor, I will take partial blame  
12 for this.

13 JUDGE CHACHKIN: All right. Let's just get to the  
14 -- I understand something happened. Now, what is your  
15 suggestion, Mr. Shainis?

16 MR. SHAINIS: We have Ms. Ashauer to finish up  
17 today, which would take a very small part of the day. We  
18 then have a witness, a computer expert, who would take up  
19 some part of the day.

20 MR. KELLER: Some part of the day, but I do not  
21 anticipate that going beyond this morning.

22 JUDGE CHACHKIN: Who is that?

23 MR. KELLER: His name is Eric Johnson. He is down  
24 in the witness room right now ready to come in as soon as we  
25 are finished with Ms. Ashauer and you are otherwise ready

1 for him.

2 JUDGE CHACHKIN: All right. Then we recess for  
3 the day? Is that correct?

4 MR. SHAINIS: Well --

5 JUDGE CHACHKIN: That is all the witnesses you  
6 have? Is that correct?

7 MR. SHAINIS: Yes.

8 MR. KELLER: Well, we have another suggestion.

9 JUDGE CHACHKIN: Mr. Hanno?

10 MR. SHAINIS: No. He is not in.

11 MR. KELLER: We are going to have five witnesses  
12 here tomorrow. It is going to be a busy day.

13 MR. SHAINIS: The suggestion might be that we have  
14 an admission session for the rest of today on our exhibits.

15 MR. KELLER: Get through the process of  
16 identifying --

17 JUDGE CHACHKIN: I did not know you wanted to  
18 offer your exhibits. I thought you were going to do it as  
19 you were doing it.

20 MR. SHAINIS: That was what I was intending to do,  
21 but I do not know. If you want us to do that, we will be  
22 happy to.

23 JUDGE CHACHKIN: Well, whichever way you want to  
24 proceed.

25 MR. KELLER: We are prepared to say if you did not

1 want to have a total down day, we could go through that  
2 process now. We are easy either way.

3 JUDGE CHACHKIN: Do you intend to offer all your  
4 exhibits?

5 MR. KELLER: Not all, but many.

6 JUDGE CHACHKIN: Do you think there will be a  
7 dispute about them? Well, no question. We could certainly  
8 do that. That would certainly save us some time.

9 I just want to say that as far as I am concerned,  
10 all the parties in this case have cooperated, and we are  
11 moving very speedily. If there are delays for reasons as  
12 you have named, that is no problem.

13 MR. KELLER: Thank you, Your Honor.

14 JUDGE CHACHKIN: We will move as quickly as we can  
15 to finish the case, but I do appreciate the efforts of all  
16 the parties here to cooperate so we can get this case over  
17 with.

18 MR. KELLER: Thank you.

19 JUDGE CHACHKIN: Let's call Ms. Ashauer to the  
20 stand.

21 MR. SCHAUBLE: Your Honor, let me bring up one  
22 matter with respect to --

23 JUDGE CHACHKIN: All right.

24 MR. SCHAUBLE: -- Mr. Johnson.

25 JUDGE CHACHKIN: Yes?

1           MR. SCHAUBLE: Is Mr. Johnson's testimony going to  
2 be limited to matters of rebuttal to Mr. Cordaro, or is he  
3 going to be testifying on matters beyond that?

4           MR. KELLER: Well, his testimony is going to be  
5 limited to matters in direct response to the subject matter  
6 of Mr. Cordaro's testimony, yes.

7           It is not rebuttal in the sense that over the  
8 evening I reviewed Your Honor's rulings on the first day  
9 regarding rebuttal witnesses, so I do not have a transcript  
10 of Mr. Cordaro's testimony, and I am not going to ask him to  
11 comment. "Well, Mr. Cordaro said this. Therefore, what do  
12 you say?"

13           What I have instead done is given him the actual  
14 computer files. I have given him the Bureau exhibits. I  
15 have discussed with him, and then, quite frankly, what I am  
16 going to do is ask him certain questions that I hoped to  
17 elicit from Mr. Cordaro, to which Mr. Cordaro either did not  
18 remember, did not recall or offered answers which I do not  
19 believe are accurate and, therefore, going to ask this  
20 witness to testify. I believe the testimony will go to  
21 clarifying or correcting or rebutting the information  
22 provided by Mr. Cordaro.

23           I am not sure I know how you define the scope of  
24 rebuttal, but, yes, he is being offered solely to testify  
25 about matters relating to the data disks produced by Mr.

1 Cordaro.

2 JUDGE CHACHKIN: All right.

3 MR. KELLER: I forgot to offer this. I guess you  
4 are certainly willing to speak with him before he testifies  
5 if you wish.

6 MR. KNOWLES-KELLETT: That was our question, Your  
7 Honor. Let me think about it while Ms. Ashauer is  
8 testifying, if I could.

9 JUDGE CHACHKIN: All right. Ms. Ashauer, you were  
10 previously sworn. You are still under oath.  
11 Whereupon,

12 BARBARA ASHAUER  
13 having been previously duly sworn, was recalled as a witness  
14 herein and was examined and testified further as follows:

15 MR. SHAINIS: Your Honor, unless there is an  
16 objection, I plan to ask Ms. Ashauer a few questions, and  
17 then on some technical aspects Mr. Keller would ask her a  
18 few questions.

19 JUDGE CHACHKIN: Do you have any objection to that  
20 procedure?

21 MR. SCHAUBLE: No objection to that, Your Honor.

22 JUDGE CHACHKIN: All right.

23 MR. SHAINIS: Thank you.

24 FURTHER DIRECT EXAMINATION

25 BY MR. SHAINIS:



1 Q Ms. Ashauer, do you know a Roy Jensen?

2 A Yes.

3 Q How do you know Mr. Jensen?

4 A Mr. Jensen was the general manager at Southland  
5 Communications Corporation when I started to work for Mr.  
6 Kay.

7 Q Okay. You started to work for Mr. Kay in what  
8 year?

9 A June of 1991.

10 Q Okay. You knew Mr. Jensen from that period of  
11 time until he left?

12 A That's correct.

13 Q Do you recall approximately when he left the  
14 employ of Mr. Kay?

15 A I believe he was there for a couple of years. I  
16 think it was 1993 when he left. I couldn't say exactly  
17 when.

18 Q Okay.

19 A It may have been a different date. I'm just not  
20 sure.

21 Q I understand. To the best of your recollection?

22 A Yes.

23 Q Do you know a gentleman named Kevin Hessman?

24 A Yes.

25 Q And under what circumstances do you know Mr.

1 Hessman?

2 A Mr. Hessman was also employed by Southland  
3 Communications when I started there.

4 Q Okay. Do you know when Mr. Hessman left Southland  
5 Communications?

6 A I believe he's the one that left in 1993. I think  
7 Mr. Jensen had left prior to that, but I'm not sure of the  
8 time.

9 Q You had dealings with each of these gentlemen? Is  
10 that correct?

11 A Yes.

12 Q Okay. Would these be regular dealings on a  
13 day-to-day basis?

14 A Yes, pretty much.

15 Q Do you have an opinion as to their honesty?

16 A Yes.

17 Q What is that opinion?

18 A Well, I never felt quite comfortable with either  
19 of them. I didn't feel that they were being honest with me  
20 and that they were truthful.

21 MR. SHAINIS: Your Honor, I am going to allow Mr.  
22 Keller now to ask his questions.

23 DIRECT EXAMINATION

24 BY MR. KELLER:

25 Q Ms. Ashauer, I would like you to refer, if it is

1 in the binders in front of you and if not we can get it, to  
2 WTB Exhibit No. 321.

3 A 321. Yes.

4 Q 321.

5 A Uh-huh.

6 Q I would like you to turn to page 4 of 5 of that  
7 exhibit.

8 A Yes.

9 Q Do you recognize this document?

10 A Yes, I do.

11 Q What is it?

12 A This is my acknowledgement, a notary  
13 acknowledgement.

14 Q You are a notary public?

15 A Yes, I am.

16 Q How long have you been a notary?

17 A For at least 20 years.

18 Q Okay. That is your signature at the bottom of  
19 this form where it says, "Witnessed by my hand and official  
20 seal?"

21 A Yes, it is.

22 Q Referring to this document, what does it purport  
23 to be notarizing?

24 A It is notarizing an assignment of authorization.

25 Q Okay. It says there "Number of Pages: 1".

1 A That's correct.

2 Q Is that referring to this page or to some other  
3 document?

4 A No. To the page that this is attached to.

5 Q Okay. I will refer you to page 3 of that exhibit,  
6 the previous page. Is that the page or does that appear to  
7 be the page that you are --

8 A It is an assignment of authorization, yes.

9 Q I notice down by the signature it says "Vince  
10 Cordaro" on there, and there is a signature. Do you see the  
11 date after that signature? That appears to be "11-21-92",  
12 correct?

13 A Yes.

14 Q Turning back to page 4 of 5, what is the date on  
15 which you authorized this document?

16 A 11-21-92.

17 Q Now, do you have a specific recollection, sitting  
18 here today, of having executed this notary form?

19 A No. I don't recall this particular form.

20 Q My question is I want you to look at page 4 of 5.  
21 Page 3 of 5. Excuse me.

22 A Yes.

23 Q First go back to 4 of 5. Do you believe that this  
24 is the form that you executed though?

25 A Yes, I would assume so. It would normally be

1 stapled to it.

2 Q Right. Would you have executed this particular  
3 notary form, page 4 of 5, if, turning back to page 3 of 5  
4 for a moment, you see on page 3 of 5 there is an FCC form,  
5 an assignment of authorization form, and there are certain  
6 blanks where information is filled in, "Service", "GX". Do  
7 you see that?

8 A Yes.

9 Q "Licensing Name and Station Location: Vince  
10 Cordaro, Rasnow Peak."

11 A Yes.

12 Q Do you see a call sign typed into that box?

13 A Yes, I do.

14 Q WNXR890?

15 A Uh-huh.

16 Q Then there is James A. Kay, Jr., on the line  
17 after, "I hereby propose the assignment of all my rights and  
18 assignment to," and the name James A. Kay, Jr., is typed in?

19 A Yes.

20 Q My question for you is would you have executed  
21 this notary form had information on this previous form been  
22 blank?

23 MR. SCHAUBLE: Objection. Leading.

24 JUDGE CHACHKIN: I will overrule the objection.

25 THE WITNESS: No, I would not.

1 BY MR. KELLER:

2 Q Why not?

3 A The California notary rules prohibit signing and  
4 notarizing any form that is not complete.

5 Q Well, now sometimes I fill out forms for FCC  
6 purposes or other purposes where there is certain  
7 information. There might be one or two blank spots on the  
8 form that are not relevant. How do you deal with a  
9 situation like that?

10 A Normally you would either line through it or put  
11 an N/A, not applicable, something to show that that  
12 particular space had been acknowledged.

13 MR. KELLER: No further questions. No further  
14 questions from me.

15 Excuse me one moment.

16 (Pause.)

17 BY MR. KELLER:

18 Q Have you ever executed a notarization such as this  
19 where information on a form is blank?

20 A No, I have not.

21 MR. KELLER: No further questions.

22 JUDGE CHACHKIN: Cross-examination?

23 MR. SCHAUBLE: Your Honor, first I would like to  
24 move to strike her testimony concerning Messrs. Jensen and  
25 Hessman on the basis that there was opinion given with no

1 basis or background whatsoever. Therefore, I think it  
2 totally --

3 JUDGE CHACHKIN: You did not object. The question  
4 was asked and answered. You did not object. Now you can  
5 cross-examine about the subject.

6 I was waiting for an objection. No objection was  
7 made, so I permitted the question.

8 MR. SCHAUBLE: Your Honor, I thought there was  
9 going to be a basis provided.

10 JUDGE CHACHKIN: Well, it is up to you to object.  
11 The question has been asked and answered. Now you have to  
12 proceed.

13 MR. SCHAUBLE: Okay.

14 CROSS-EXAMINATION

15 BY MR. SCHAUBLE:

16 Q Ms. Ashauer, how often do you notarize documents?

17 A Currently?

18 Q In 1992, how frequently did you notarize  
19 documents?

20 A I can't recall.

21 Q Can you provide me with any sort of estimate as to  
22 how frequently?

23 A Well, it's not needed very frequently.

24 JUDGE CHACHKIN: I gather you were the one in the  
25 office who had the sole authority. Were you the sole notary

1 public at Kay?

2 THE WITNESS: Yes.

3 JUDGE CHACHKIN: So whenever there had to be  
4 documents notarized, I assume they came to you to notarize?  
5 Is that correct?

6 THE WITNESS: Correct.

7 BY MR. SCHAUBLE:

8 Q Ms. Ashauer, turn to page 4 of Exhibit 321. Do  
9 you see, "The person known to me?" Do you see that  
10 language, and then after the "or" there is certain language  
11 there?

12 A After what?

13 JUDGE CHACHKIN: She has checked, "Personally  
14 known to me."

15 MR. SCHAUBLE: "Personally known to me."

16 THE WITNESS: Yes.

17 BY MR. SCHAUBLE:

18 Q Is it correct in this acknowledgement that what  
19 you were acknowledging is that you knew Mr. Cordaro, and you  
20 knew that it was his signature on this document?

21 A That's correct.

22 MR. SCHAUBLE: Okay. No further questions, Your  
23 Honor.

24 EXAMINATION BY JUDGE

25 JUDGE CHACHKIN: Let me ask you this. You



1 testified concerning your doubts about the honesty of Mr.  
2 Jensen and Mr. Hessman. Can you give me specific examples  
3 on which you base that conclusion?

4 THE WITNESS: It would be difficult to give  
5 specific examples. It would be the type of thing where I  
6 was told one thing, and then it turned out to be something  
7 else.

8 JUDGE CHACHKIN: What did it concern?

9 THE WITNESS: It could be -- I'm trying to think  
10 back. It was quite a long time ago. I just can't  
11 specifically think of anything right at the moment, sir.

12 JUDGE CHACHKIN: I must say, unless you can give  
13 me a basis for your opinion, I do not see how it is going to  
14 do much good for the record. If you could give me a basis  
15 for how you reached this opinion, that is one thing. Just a  
16 general statement is not going to be very useful.

17 I assume you cannot give me specific examples on  
18 which you base your conclusion that these two individuals,  
19 in your judgement, are not honest. Is that correct?

20 THE WITNESS: Well, I just -- I'm just trying to  
21 recall. I can't at this moment think.

22 JUDGE CHACHKIN: All right. Thank you.

23 Any redirect?

24 MR. KELLER: No, Your Honor.

25 MR. SHAINIS: No, Your Honor.

1 JUDGE CHACHKIN: You are excused. Thank you very  
2 much.

3 (Witness excused.)

4 MR. KNOWLES-KELLETT: With respect to the next  
5 witness, --

6 JUDGE CHACHKIN: Yes?

7 MR. KNOWLES-KELLETT: -- we do not see a need to  
8 interview him, as long as it is limited to what they said.

9 JUDGE CHACHKIN: All right. Let's call the next  
10 witness then.

11 We will go off the record.

12 (Whereupon, a short recess was taken.)

13 JUDGE CHACHKIN: We are on the record.

14 Would you please stand up, sir, and raise your  
15 right hand?

16 Whereupon,

17 ERIC R. JOHNSON

18 having been first duly sworn, was called as a witness herein  
19 and was examined and testified as follows:

20 JUDGE CHACHKIN: Please be seated.

21 DIRECT EXAMINATION

22 BY MR. KELLER:

23 Q Would you please state your full name for the  
24 record?

25 A Eric Robert Johnson.

1 Q And your business address?

2 A It would be 7475 Old Alexandria Ferry Road,

3 Clinton, Maryland 20735.

4 Q Who is your employer?

5 A Micro Support Systems and Clinton Computer.

6 Q What is your position?

7 A Senior systems engineer.

8 Q What does that entail?

9 A I'm a network engineer that has senior level  
10 status of seven years or more in the industry, the computer  
11 industry.

12 Q What, if any, formal education have you had in the  
13 computer-related area?

14 A Novell Certified Netware Administrator, Version 3,  
15 and I have an Associate's degree from Prince George's  
16 Community College. The degree was in 1988 from Largo,  
17 Maryland. The rest have all just been manufacturer testing  
18 and trade certifications.

19 Q Are you a member of any industry groups, trade  
20 groups?

21 A The Novell users group, a local area users group.

22 Q Novell is a computer network vendor? Is that  
23 correct?

24 A They are, yes. They're a manufacturer of  
25 operating systems.

1           Q     How long have you been employed in the computer  
2     field?

3           A     Since 1988.

4           Q     What types of jobs have you done during that time?

5           A     Anywhere from a simple installation of a PC, which  
6     would include installing the operating system and its  
7     applications, all the way up to local area networks,  
8     combining them all together in one central file server, up  
9     to wide area networks, combining global access  
10    communications.

11          Q     Okay. Does your knowledge and experience include  
12    DOS- and Windows-based systems?

13          A     Yes. It has through the years, yes.

14          Q     Okay. Do you also have a familiarity with popular  
15    software applications that run on DOS- and Windows-based  
16    systems?

17          A     Yes.

18          Q     Are you familiar with an application called  
19    FoxPro?

20          A     Yes.

21          Q     What is that?

22          A     It is what is referred to in the industry as a  
23    database engine that programs can be built around. It is a  
24    custom programming application.

25          Q     Can you explain to me the distinction between a